



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 12 2010

**OFFICE OF
AIR AND RADIATION**

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your November 19, 2009, letter to Administrator Jackson asking for information concerning the potential employment impacts of several actions the U.S. Environmental Protection Agency (EPA) is taking under the Clean Air Act to address the threat of climate change. The Administrator has asked me to respond to you on her behalf.

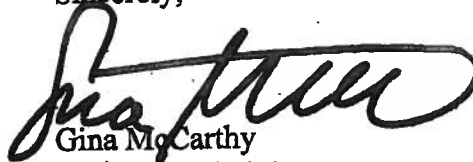
President Obama and Administrator Jackson have repeatedly stated their support for legislation to achieve reductions in greenhouse gas emissions. They have also recognized EPA's obligation to respond to the Supreme Court's nearly three year-old decision that greenhouse gases are pollutants under the Clean Air Act and that EPA must determine whether greenhouse gas emissions from motor vehicles endanger public health or welfare. As the Court explained, such a determination may be based only on available scientific information, and if EPA finds that motor vehicle greenhouse gases meet the endangerment test, it must set greenhouse gas emissions standards for those vehicles.

EPA recognizes both the importance of the endangerment determination, which the Administrator has now made, and the need for the U.S. economy to regain sound footing. With that in mind, we have taken a careful, common sense approach to taking action under the Clean Air Act while Congress continues to consider climate change legislation. As the President, the Administrator and other Cabinet-level officials have explained, transitioning to clean energy is essential for establishing a strong, sustainable foundation for future U.S. economic growth. While comprehensive climate legislation to promote such a transition is under consideration, EPA is obligated to consider action under the Clean Air Act. As we do so, we understand the need to protect and create jobs, and we will look for opportunities to both reduce emissions and create incentives for clean energy and manufacturing job growth here in the U.S.

In your letter, you ask a series of questions concerning the potential impact of several EPA proposed and final actions on job and economic growth. You ask in particular about whether EPA has conducted required analyses under the Clean Air Act and Executive Order 12866 for those actions. As we explain in our enclosed answers to your specific questions, EPA has complied with all applicable analytical requirements, and we are committed to fashioning any Clean Air Act rules in a manner that minimizes any job losses and enhances the U.S. economy's potential for job growth to the maximum extent allowed by law.

Thank you again for your letter. Please contact Diann Frantz of our Office of Congressional and Intergovernmental Relations at 202 564-3668 if you have any further questions.

Sincerely,



Gina McCarthy
Assistant Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 12 2010

OFFICE OF
AIR AND RADIATION

The Honorable Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Walden:

Thank you for your November 19, 2009, letter to Administrator Jackson asking for information concerning the potential employment impacts of several actions the U.S. Environmental Protection Agency (EPA) is taking under the Clean Air Act to address the threat of climate change. The Administrator has asked me to respond to you on her behalf.

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Thank you again for your letter. Please contact Diann Frantz of our Office of Congressional and Intergovernmental Relations at 202 564-3668 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", written over a horizontal line.

Gina McCarthy
Assistant Administrator

Enclosure

ENCLOSURE

Questions 1-6. This series of questions asks for EPA estimates of job losses and/or shifts in employment in the United States that might occur as a result of the CAA section 202 endangerment finding (issued by EPA on December 7, 2009), the proposed light-duty vehicle rule, and regulation of greenhouse gases under the PSD and Title V permitting programs. Several of the questions also ask EPA to identify any near-term and longer term job losses in the United States, and when, in what regions of the country, and in what employment sectors any such job losses would be expected to occur. Some questions ask for documents, as well. Because the questions concern actions that are inter-related, we have provided a single, integrated response.

EPA was directed by the U.S. Supreme Court in its 2007 *Massachusetts v. EPA* decision to determine under section 202(a) of the Clean Air Act whether greenhouse gases from motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, or whether available scientific information is inadequate to make such a determination. The Court also ruled that if EPA found that motor vehicle greenhouse gas emissions met the endangerment test, it would be required to set motor vehicle standards for those emissions under section 202(a) of the Act.

EPA recently responded to the Supreme Court's decision by issuing final endangerment and cause or contribute findings for greenhouse gases under section 202(a) (74 FR 66496, December 15, 2009). Administrator Jackson made those findings after a thorough review and analysis of the best available science and public comments on the Agency's proposed findings and the scientific record EPA had compiled in developing those findings. As a result of the findings, EPA is now obligated to issue motor vehicle greenhouse gas standards. EPA proposed such standards earlier this year as part of the President's plan to help revitalize the domestic auto industry.

In issuing the findings, EPA explained that they are not a regulation promulgated under section 202(a) of the CAA, since they do not include any regulatory text and they do not impose any requirements. As a result, EPA was not required to conduct an economic analysis of the findings under EO 12866. Moreover, since the Supreme Court made clear in *Massachusetts* that EPA may consider only scientific information in making an endangerment determination under CAA section 202(a), there was no statutory requirement or purpose for conducting economic analysis as part of the development of the findings. As EPA explained in the final findings and the accompanying responses to comments (Volume 11), the appropriate place to consider the economic impacts of mitigation measures that may follow a positive endangerment finding is in the context of developing and promulgating those measures. EPA generally provides an analysis of the cost, economic impacts, and benefits of regulatory actions in conjunction with the proposed and final rules that establish regulatory standards or requirements under the Clean Air Act.

In keeping with that practice, EPA conducted economic analyses of the proposed light-duty vehicle greenhouse gas standards as required by EO 12866 and as relevant to the statutory criteria for setting such standards. Relevant to your inquiry concerning potential jobs impacts, EPA analyzed the effects of the light-duty rule on vehicle purchases. The analysis assumed that the full cost of the new technology would be passed along to consumers. In addition, it incorporated the effect of this price increase on vehicle insurance, sales tax, vehicle financing, and vehicle resale value. It used five years' worth of vehicle fuel savings as an offset to the increased price. The fuel savings more than offset the increase in vehicle costs. The results indicate that both car and truck sales are expected to increase. This increase should lead to increased employment in the auto related industry sector. NHTSA conducted a parallel analysis and got results consistent with those of EPA. These results are discussed in the Preamble, Sections III.H.5 and IV.G.5; in EPA's Draft Regulatory Impact Analysis in Section 8.1.1, and in NHTSA's Preliminary Regulatory Impact Analysis Chapter VII, on pp. 334-340.

With respect to PSD and Title V programs, EPA prepared a Regulatory Impact Analysis (RIA) of the proposed greenhouse gas tailoring rule (September 2009) to analyze the benefits and costs of the proposed rule, as required under EO 12866. Since the proposed tailoring rule, if adopted, would provide regulatory relief to smaller sources that might otherwise become subject to the PSD and Title V programs, no job or employment losses are anticipated as a result of the tailoring rule nor were any quantified.

As part of the proposed tailoring rule, EPA examined the permitting requirements that would apply to large sources of greenhouse gas emissions should such emissions become subject to the PSD and Title V programs. In particular, EPA noted that new or modified sources that exceeded PSD applicability thresholds for their greenhouse gas emissions would be required to apply best available control technology (BACT) to minimize those emissions. The Clean Air Act requires that costs be taken into account in making BACT determinations.

To help develop potential guidance for making BACT determination for greenhouse gas emissions from various types of sources, EPA has convened a subcommittee of its Clean Air Act Advisory Committee to obtain information and advice from industry, state, and environmental group stakeholders. EPA believes applying BACT to new and expanding large emitters of greenhouse gases represents one of many opportunities for reducing emissions and growing clean industry, businesses and jobs. For example, as nations around the world work to reduce greenhouse gas emissions and intensity, U.S. businesses that make advances in developing low- or no-emitting technologies and emission controls may find growing markets for their products.

We do not have any documents responsive to your requests.

7. With regard to Section 321 of the Clean Air Act, does EPA comply with this provision? If yes, how does EPA comply? If no, please explain.

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding concerns raised by employers or employees that requirements under the Clean Air Act will adversely affect employment. Section 321(a) provides for "continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement

of the provision of this Act and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." CAA sections 321(b) and (c) authorize, in general, an employee to petition for an investigation of alleged loss of employment due to CAA requirements, and establish procedures for such an investigation. CAA section 321(d) provides that the evaluations or investigations authorized in CAA section 321 do not authorize or require EPA or the States to modify any CAA requirement.

CAA section 321 was added in the 1977 CAA Amendments. Both the House and Senate Committee Reports for the 1977 amendments describe the purpose of section 321 as addressing situations where employers make allegations that environmental regulations will jeopardize employment possibly in order to stimulate union or other public opposition to environmental regulations. The section was intended to create a mechanism to investigate and resolve those allegations. The section was also designed to provide individual employees whose job was threatened or lost allegedly due to environmental regulations with a mechanism to have EPA investigate those allegations. The committee reports do not describe the provision as applying broadly to all regulations or implementation plans under the CAA.

In keeping with congressional intent, EPA has not interpreted CAA section 321 to require EPA to conduct employment investigations in taking regulatory actions. Conducting such investigations as part of rulemakings would have limited utility since section 321(d) expressly prohibits EPA (or the States, in case of applicable implementation plans) from "modifying or withdrawing any requirement imposed or proposed to be imposed under the Act" on the basis of such investigations. As noted above, section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations – typically made by employers – that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs.

8. With regard to the Mandatory Reporting Rule, EPA denied apparently reasonable requests for a one-year delay of the reporting requirements to allow adequate time for reporting entities to review the final rule and install monitoring equipment. EPA declined all such requests on the grounds that this would mean the first annual reports would not be received until 2012, "which would likely be too late for many ongoing GHG policy and program development needs." [Preamble, 74 Fed. Reg. at 56,274 (October 30, 2009)]

a. Is it feasible for up to 30,000 entities affected by this rule, many of which have not previously been subject to similar reporting requirements, to review such a complex rule, announced by EPA on September 22, 2009 but not formally published in the Federal Register until October 30, 2009, to evaluate those requirements and if necessary begin monitoring and data collection by January 1, 2010?

EPA estimates that approximately 10,000 facilities will meet the applicability thresholds in the rule, and that up to 30,000 facilities would need to understand the applicability criteria to assess whether or not they are potentially affected by the rule. EPA has made available a variety of tools and guidance to assist facilities in their determination of whether or not the rule applies to them. Of the 10,000 facilities expected to report, the large majority currently report emissions of

criteria pollutants to States and EPA, report greenhouse gas emissions to state and voluntary programs, or report fuel and other statistics to various government agencies. In drafting the rule, EPA examined and, where appropriate, built upon the available methods already in use by industries and reporting programs and the data available to reporters as part of standard business operations. Consequently, the large majority of these facilities should be generally familiar with the approaches in this rule.

EPA has provided flexibility in the final rule that addresses and alleviates potential challenges faced by reporters in 2010. First, all facilities have the option of using best available monitoring methods for the first quarter of 2010, to allow time for getting internal systems and equipment in place. Facilities can also petition EPA to extend this flexibility to the end of 2010 if it is not feasible to procure, install, and operate new equipment by the end of the first quarter. Second, to the extent that there are facilities that have not previously been subject to any reporting requirements, they are very likely to be facilities that generate greenhouse gas emissions only by burning fossil fuels in boilers and turbines. Under the reporting rule, these facilities have the flexibility in 2010 to use any of the methods provided for calculating these emissions, including methods that rely on existing fuel purchase records and reference book emission factors.

b. What are the "ongoing GHG policy and program development needs" referred to in the preamble? Was the denial of the requests for a one-year delay based on statutory requirements or was this a policy determination?

In the proposed and final preambles to the reporting rule, as well as the response to comments document, EPA describes some of the numerous provisions of the Clean Air Act the implementation of which would benefit from the information that will be gathered by this rule. See 73 FR 16448, 16454-55, 74 FR 56260, 56286-87, EPA's Response to Public Comments, Volume 9, pp. 9-12 (available at <http://www.epa.gov/climatechange/emissions/downloads09/documents/Volume9-RTCLegalIssuesRTC-FINAL.pdf>).

The FY2008 Consolidated Appropriations Act instructed EPA to develop and publish a mandatory GHG reporting rule no later than 18 months from date of enactment (e.g., June 2009). Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat 1844, 2128 (2008). Congress reaffirmed interest in a GHG reporting rule, and provided additional funding, in the 2009 Appropriations Act (Consolidated Appropriations Act, 2009, Public Law 110-329, 122 Stat. 3574-3716). Although the Appropriations Acts did not specifically require that reporting begin in calendar year 2010, the expedited schedule indicates Congressional intent that EPA begin gathering information as soon as practical. Indeed, EPA received inquiries from a number of members of Congress who specifically noted a preference that EPA begin gathering information in January 2010.

EPA agrees that calendar year 2010 emissions data are crucial to the timely development of future GHG policy and regulatory programs. Delaying data collection until calendar year 2011 would mean the data would not be received until 2012, more than four years after enactment of the Appropriations Act instructing EPA to promulgate the rule, and potentially too late to inform ongoing GHG policy and program development work.

9. What are the potential penalties, including but not limited to monetary penalties and other civil or criminal sanctions, for violations of the (i) Mandatory Reporting Rule; (ii) Proposed Light-Duty Vehicles Standards program; (iii) PSD program; and (iv) title V program? Please provide a separate response for each item, including maximum monetary penalties.

Potential penalties for the programs noted above are governed by the limits in Clean Air Act Sections 113 and 205. Section 113(c), which governs the PSD and title V program as well as the Mandatory Reporting Rule, also contains criminal enforcement authority for knowing violations. The proposed Light-Duty Vehicle Standards program carries civil and administrative penalties of up to \$37,500 per day of violation but does not have criminal fine or imprisonment authority.

10. Are citizen suits authorized for alleged violations of the (i) Mandatory Reporting Rule; (ii) Proposed Light-duty Vehicle Standards program; (iii) PSD program; and/or (iv) title V program? Please provide a separate response for each item.

Section 304(a)(1) of the Clean Air Act authorizes citizens to bring a lawsuit against any person who is alleged to have violated, or to be in violation of, (a) an emission standard or limitation under the CAA, or (b) an order issued by EPA or a State with respect to a CAA emission standard or limitation. Section 304(f) contains a definition of "emission standard or limitation under [the CAA]" for purposes of section 304, which includes:

- (1) a schedule or timetable for compliance, emission limitation, standard of performance or emission standard,
- (2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or
- (3) any condition or requirement of a Prevention of Significant Deterioration (PSD) permit or nonattainment New Source Review (NSR) permit, section 119 regarding primary nonferrous smelter orders, various measures in state implementation plans (SIPs), section 211(e) and (f) regarding fuel and fuel additives, section 169A (regarding visibility), title VI regarding stratospheric ozone protection, and sections 111 and 112, or
- (4) any other standard, limitation or schedule established under any title V or SIP permit, any permit term or condition, and any requirement to obtain a permit as a condition of operation.

Furthermore, section 304(a)(3) authorized citizen suits "against any person who proposes to construct or constructs any new or modified major emitting facility" without a required PSD permit or nonattainment NSR permit, or who is alleged to have violated, or be in violation of, any condition of such permit.

We are presuming for the purposes of answering the question that the question is about alleged violations of these various programs by sources or manufacturers.

(i) **Mandatory Reporting Rule.** A requirement to monitor and report information in a rule promulgated under section 114 and 208 of the Clean Air Act is not specifically included in the definition of "emission standard or limitation" in section 304.

(ii) **Proposed Light-Duty Vehicle Rule.** The Light-Duty Vehicle Rule has only been proposed, so currently it is not enforceable by anyone. Section 203 of the Act defines prohibited acts applicable to manufacturers of new motor vehicles and other parties for actions related to motor vehicles that are subject to emissions standards. For example, manufacturers are prohibited from selling a new motor vehicle unless it is covered by a certificate of conformity, where the certificates are issued by EPA based upon a manufacturer's demonstration that their new vehicles will comply with the standards. The citizen suit provision may authorize a suit against a manufacturer who violates the prohibition on sale or introduction into commerce without a certificate of conformity, as that is the conduct that is prohibited by section 203 with respect to the applicable emissions standards.

(iii) **PSD Program.** Section 304(a)(3) specifically authorizes citizen suits against a person allegedly constructing without a required PSD permit, or who has or is violating a PSD permit. Moreover, the definition of "emission standard or limitation" (enforceable under section 304(a)(1)) includes any condition of a PSD permit, as well as any requirement to obtain a permit as a condition of operations.

(iv) **Title V.** The definition of "emission standard or limitation" specifically includes "any other standard, limitation, or schedule established under any permit issued pursuant to title V of [the CAA], any permit term or condition, and any requirement to obtain a permit as a condition of operations."

11. What additional rulemakings or programs relating to regulation of greenhouse gas emissions is EPA currently considering? Please identify specifically all such potential rulemakings or programs.

EPA is currently evaluating controls for motor vehicles other than those covered by the proposed Light-Duty Vehicle Greenhouse Gas Rule. The Supreme Court's *Massachusetts* decision covers all motor vehicles. EPA is also reviewing a number of petitions submitted by various States and organizations requesting that EPA use its Clean Air Act authorities to take action to reduce greenhouse gas emissions from other transportation sources, including aircraft (under § 231(a)(2)), ocean-going vessels (under § 213(a)(4)), other nonroad engines and vehicle sources (also under § 213(a)(4)), and fuels used in motor vehicles, nonroad vehicles, and aircraft (under §§211 and 231).

EPA has received petitions, public comments and law suits seeking greenhouse gas emission controls under Clean Air Act section 111 for seven categories of sources: cement plants, petroleum refineries, nitric acid plants, utility boilers, oil and gas production, landfills, concentrated animal feeding operations, and coal preparation facilities. The Agency has made no decisions on these requests, with one exception: in the case of coal preparation facilities, we declined to set standards for GHGs.

12. Can you provide any assurances that EPA's proposed regulation of greenhouse gases under the Clean Air Act will not result in significant near or long-term job losses or shifts in employment in the United States?

The Agency and the Administration are committed to taking actions that promote public health and safety, environmental protection and economic prosperity. We believe these goals are complementary.

13 . If the EPA withholds any documents or information in response to this letter, please provide a Vaughn Index or log of the withheld items. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

EPA is not withholding any documents requested by your letter.